IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 15093 of 2001(V)

PETITIONERS:

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1) MUHAMMEDUNNI HAJI (DIED),
PAROKOTTIL HOUSE,
EDATHANATTUKARA (P.O.),
MANNARKKAD,
PALAKKAD DISTRICT.

Suppl. 2) UMMER HAJI, S/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

3) MUHAMMED ABDUL RAHIMAN,
S/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

4) P.MUHAMMEDALI, S/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

5) P.SUBAIR, S/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

6) K.KHADEEJA UMMA, W/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

7) P.FATHIMA, D/O.LATAE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

8) P.ABIDA, D/O.LATE MUHAMMEDUNNI HAJI,
PAROKOTTIL HOUSE, EDATHANATTUKARA (P.O.),
MANNARKKAD, PALAKKAD DISTRICT.

(.....2)

(Supplementary petitioners 2 to 8 are impleaded as per order dtd.2-11-2007 in I.A.No.8081/2006.)

BY ADV. SRI.K.MOHANA KANNAN

RESPONDENTS:
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1) **THE SUB COLLECTOR (REVENUE DIVISIONAL OFFICER) PERINTHALMANNA.**

2) **THE TAHSILDAR, PERINTHALMANNA.**

3) **THE DISTRICT COLLECTOR, MALAPPURAM.**

BY GOVERNMENT PLEADER SHRI.TEKCHAND. V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.23687 OF 2001 IN OP.NO.15093 OF 2001-V.

DISMISSED.

02-11-2007. **Sd/- T.R.Ramachandran Nair, Judge.**

APPENDIX

Petitioners' Exhibits:-

Ext.P1:	**Copy of the extract of the Assessment Register maintained by the Panchayat in respect of the building of the petitioner.**
Ext.P1(a):	**Copy of the receipt issued by the Panchayat, dtd.8-7-1994.**
Ext.P2:	**Copy of the Order of the 2nd respondent bearing No.E1-6124/98 dated 25/3/1999.**
Ext.P3:	**Copy of the proceedings of the 1st respondent Ref.No.B5180 of 1999 dtd.16-8-1999.**
Ext.P4:-	**Copy of the proceedings of the 1st respondent Ref.No.B5180/99 dtd.8-11-1999.**
Ext.P5:-	**Copy of the judgment of this Hon'ble Court in OP.No.32/2000 dated 5-1-2000.**
Ext.P6:-	**Copy of the Memorandum of revision filed by the petitioner before the 3rd respondent in RP.No.2844/2000 dtd.18-1-2000.**
Ext.P7:-	**Copy of the order of the 3rd respondent No.2844/2000 dated 25-1-2001.**
Ext.P8:-	**Copy of the petition filed by the petitioners' counsel dated 16-2-2001.**
Ext.P9:-	**Copy of the notice issued by the 2nd respondent No.E1/6124/98 dated 2/3/2001.**
Ext.P10:-	**Copy of the order No.N4/2844/2000 dtd.5-4-2001 of the 3rd respondent.**

Respondents' Exhibits:- **Nil.**

(true copy)

P.A. TO JUDGE.

kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.15093 of 2001-V.

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Dated this the 2nd day of November, 2007.

J U D G M E N T

This writ petition is filed challenging Exts.P2, P4 and P7 orders passed by the authorities under the Building Tax Act. Petitioner died pending the Original Petition and additional petitioners are his legal heirs. The case of the additional petitioners is that the deceased petitioner had constructed four shop rooms in Survey No.93/6 of Melattur Village which are situated in Ward No.II of the Melattur Grama Panchayat. Its plinth area is 441.64 Sq.meters. According to the petitioner, Exts.P1 and P1(a) would show that the Panchayat had assessed tax during the year 1993-'94. According to the case pleaded in the writ petition, the construction of the building was over in the year 1990. As per Ext.P2 building tax was assessed at a total amount of Rs.26,100/-. This was challenged by the petitioner in an appeal filed as per Section 11 of the Kerala Building Tax Act and he paid one instalment out of the total amount assessed. By Ext.P4 the appeal was

dismissed. Again he filed OP.No.32 of 2000 and by Ext.P5 judgment this Court directed the petitioner to file a revision before the 3rd respondent under Section 13 of the Kerala Building Tax Act. Ext.P6 is the revision petition thus filed.

2. The petitioner's case is that the revision petition was heard on 30-9-2000 and then it was posted for further hearing on 25.10.2000 and then to 17.1.2001. He had engaged a counsel to appear for him on 17.1.2001. The counsel was went to the office of the 3rd respondent and he left the office since he was informed that there was no sitting on that day. Subsequently the petitioner received Ext.P7 order dated 25.1.2001 whereby the revision petition was dismissed. It is recorded in ext.P7 that the petitioner was absent on 17.1.2001. Thereafter the counsel filed Ext.P8 petition seeking for a rehearing stating the reasons for his absence. It is specifically stated that the counsel left the office of the Collectorate after informing the matter to the Confidential Assistant with a bonafide belief that the Collector will not be ready for hearing and expecting notice for further hearing. Any way, that petition was also dismissed as per Ext.P10. Meanwhile by Ext.P9 he was issued with a notice to remit the balance amounts payable by Ext.P4.

3. The learned counsel for the petitioner submits that the revision was disposed of without hearing the petitioner on 17.1.2001. It is submitted that the request of the counsel for the petitioner by way of Ext.P8 ought to have been acted upon by the District Collector and he should have been given a chance for rehearing.

4. I heard the learned Government Pleader also.

5. The learned Government Pleader points out that even going by the provisions of Sec.5(2) the assessment cannot be successfully challenged by the petitioner. It is clear from Ext.P7 that on 17.1.2001 the deceased petitioner was not heard. Even though the respondents have got a case that he was absent on that day, going by the statements in Ext.P8 the counsel who was engaged did not argue as he was of the impression that the matter was adjourned. Going by Ext.P8 it is clear that the petitioner was also not expected to be present on the hearing date as he already engaged a counsel. In that view of the matter, I am of the view that the additional petitioners should be given a further opportunity to argue the revision petition before the District Collector. Therefore, Exts.P7 and P10 are quashed. The 3rd respondent is directed to rehear Ext.P6 after affording a reasonable opportunity of hearing to

the additional petitioners herein. As per order dated 8.5.2001 in CMP.No.23687/2001 an interim stay was granted on condition that the petitioner pays an amount of Rs.10,000/- within six weeks from that date.

6. The writ petition is therefore allowed and the 3rd respondent is directed to dispose of Ext.P8 within a period of three months from the date of receipt of a copy of this judgment. Till the matter is heard and orders are passed and communicated to the additional petitioners, the interim order granted by this Court will continue to be in force. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-